

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	No. 4:CR-02-271
	:	
v.	:	(Judge Jones)
	:	
WANDA FUENTES	:	
	:	
Defendant.	:	

MEMORANDUM AND ORDER

September 1, 2005

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Pending before the Court is a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (“the Motion”) (doc. 165) filed by the defendant Wanda Fuentes (“Defendant” or “Fuentes”) on May 18, 2005. For the reasons that follow, the Motion will be dismissed.

FACTUAL BACKGROUND/PROCEDURAL HISTORY:

The Motion stems from Fuentes’s criminal conviction in this Court. On June 25, 2003, Fuentes pled guilty to Count I of the second superseding indictment charging her with a violation of 21 U.S.C. § 846, conspiracy to distribute in excess of 50 grams of cocaine base and in excess of 100 grams of heroin. On May 17, 2004, this Court sentenced Fuentes to 120 months imprisonment to be followed by

five (5) years of supervised release. (See Rec. Doc. 158). Defendant did not appeal her conviction to the Third Circuit Court of Appeals.

DISCUSSION:

In the Motion, Fuentes requests that this Court vacate her sentence or resentence her after removing any and all enhancements. Fuentes urges the Court to retroactively apply the holding of United States v. Booker, 543 U.S. ___, 125 S. Ct. 738 (2005), to her case. The Third Circuit Court of Appeals recently held that “Booker does not apply retroactively to initial motions under § 2255 where the judgment was final as of January 12, 2005, the date Booker issued.” Lloyd v. United States, 407 F.3d 608, 616 (3d Cir. 2005). Therefore, under the preliminary review as provided in Rule 4(b) of the Rules Governing Section 2255 proceedings for the United States District Courts we will dismiss Fuentes’s Motion.¹

NOW, THEREFORE, IT IS ORDERED THAT:

1. Fuentes’s Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 (doc. 165) is **DISMISSED**.

¹ We note that Fuentes submitted a document entitled “Petitioner’s Request for Leave to Respond to any Argument the Government may Submit in Opposition to the Petitioner’s Motion to Vacate, Set Aside, or Correct a Sentence pursuant to 28 U.S.C. 2255” (doc. 166) the same day on which she filed the instant Motion, May 18, 2005. In the submission, Fuentes requests a period of 30 to 60 days in which to reply to any argument(s) interposed by the Government in opposition to her Motion. As we are dismissing Fuentes’s Motion at this juncture, the above-referenced submission is denied as moot.

2. Fuentes's Request for Leave to Respond to any Argument the Government may Submit in Opposition to her § 2255 Motion (doc. 166) is denied as moot.
3. There is no basis for the issuance of a certificate of appealability.
4. The Clerk is directed to close the file on this case.

s/ John E. Jones III

John E. Jones III

United States District Judge